

REFERENCE TITLE: expert opinion testimony; certification

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2135

Introduced by
Representative Nelson

AN ACT

AMENDING SECTIONS 12-2601 AND 12-2602, ARIZONA REVISED STATUTES; RELATING TO
CLAIMS AGAINST LICENSED PROFESSIONALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-2601, Arizona Revised Statutes, is amended to
3 read:

4 12-2601. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Claim" means a legal cause of action except for actions relating
7 to health care under sections 12-561, ~~through 12-562~~ AND 12-563 ~~of this title~~
8 or under title 46, chapter 4 or an affirmative defense to which all of the
9 following apply:

10 (a) The claim is asserted against a licensed professional in a
11 complaint, answer, cross-claim, counterclaim or third party complaint.

12 (b) The claim is based on the licensed professional's alleged breach
13 of contract, negligence, misconduct, errors or omissions in rendering
14 professional services.

15 (c) Expert testimony is necessary to prove the licensed professional's
16 standard of care or liability for the claim.

17 2. "Expert" means a person who is qualified by knowledge, skill,
18 experience, training or education to express an opinion regarding a licensed
19 professional's standard of care or liability for the claim.

20 3. "Licensed professional" means EITHER:

21 (a) A person, corporation, professional corporation, partnership,
22 limited liability company, limited liability partnership or other entity that
23 is licensed by this state to practice a profession or occupation under title
24 20 or 32 or that is admitted to the state bar.

25 (b) THE EMPLOYER OF THE LICENSED PROFESSIONAL WHO PERFORMED THE
26 PROFESSIONAL SERVICES THAT ARE THE SUBJECT OF THE CLAIM.

27 Sec. 2. Section 12-2602, Arizona Revised Statutes, is amended to read:

28 12-2602. Preliminary expert opinion testimony; certification

29 A. If a claim against a licensed professional is asserted in a civil
30 action, the claimant or the claimant's attorney shall certify in a written
31 statement that is filed and served with the claim whether or not expert
32 opinion testimony is necessary to prove the licensed professional's standard
33 of care or liability for the claim.

34 B. If the claimant or the claimant's attorney certifies pursuant to
35 subsection A that expert opinion testimony is necessary, the claimant shall
36 serve a preliminary expert opinion affidavit with the initial disclosures
37 that are required by rule 26.1, Arizona rules of civil procedure. IF THE
38 CLAIMANT DESIGNATES A NONPARTY AT FAULT AND CERTIFIES PURSUANT TO SUBSECTION
39 A THAT EXPERT TESTIMONY IS NECESSARY, THE NONPARTY AT FAULT CLAIMANT SHALL
40 DISCLOSE A PRELIMINARY EXPERT OPINION AFFIDAVIT WITH ITS INITIAL DISCLOSURES
41 OR THEREAFTER AS REQUIRED BY RULE 26.1, ARIZONA RULES OF CIVIL
42 PROCEDURE. The claimant may provide affidavits from as many experts as the
43 claimant deems necessary. The preliminary expert opinion affidavit shall
44 contain at least the following information:

1 1. The expert's qualifications to express an opinion on the licensed
2 professional's standard of care or liability for the claim.
3 2. The factual basis for each claim against a licensed professional.
4 3. The licensed professional's acts, errors or omissions that the
5 expert considers to be a violation of the applicable standard of care
6 resulting in liability.
7 4. The manner in which the licensed professional's acts, errors or
8 omissions caused or contributed to the damages or other relief sought by the
9 claimant.
10 C. The court may extend the time for compliance with this section on
11 application and good cause shown or by stipulation of the parties to the
12 claim. If the court extends the time for compliance, the court may also
13 adjust the timing and sequence of disclosures that are required from the
14 licensed professional against whom the claim is asserted.
15 D. If the claimant or the claimant's attorney certifies that expert
16 testimony is not required for its claim and the licensed professional who is
17 defending the claim disputes that certification in good faith, the licensed
18 professional may apply by motion to the court for an order requiring the
19 claimant to obtain and serve a preliminary expert opinion affidavit under
20 this section. In its motion, the licensed professional shall identify the
21 following:
22 1. The claim for which it believes expert testimony is needed.
23 2. The prima facie elements of the claim.
24 3. The legal or factual basis for its contention that expert opinion
25 testimony is required to establish the standard of care or liability for the
26 claim.
27 E. After considering the motion and any response, the court shall
28 determine whether the claimant shall comply with this section and, if the
29 court deems that compliance is necessary, shall set a date and terms for
30 compliance. The court shall stay all other proceedings and applicable time
31 periods concerning the claim pending the court's ruling on the motion to
32 compel compliance with this section.
33 F. The court, on its own motion or the motion of the licensed
34 professional, shall dismiss the claim against the licensed professional
35 without prejudice if the claimant fails to file and serve a preliminary
36 expert opinion affidavit after the claimant or the claimant's attorney has
37 certified that an affidavit is necessary or the court has ordered the
38 claimant to file and serve an affidavit.
39 G. A claimant may supplement a claim or preliminary expert opinion
40 affidavit with additional claims, evidence or expert opinions that are timely
41 disclosed under the Arizona rules of civil procedure or pursuant to court
42 order. An action under this chapter does not preclude a party from using a
43 preliminary expert opinion affidavit for any purpose, including impeachment.